

SUPREME COURT OF CALIFORNIA

1997 Revision

Containing Internal Operating
Practices and Procedures,
As Adopted
by the California Supreme Court

PRACTICES AND PROCEDURES

(REVISED 6/97)

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RONALD M. GEORGE
CHIEF JUSTICE OF CALIFORNIA

April 1997

Dear Reader:

I am pleased to present the 1997 edition of the *Supreme Court of California Practices and Procedures* booklet. Since its first printing in 1985, more than 15,000 copies of this publication have been distributed to the public and the press.

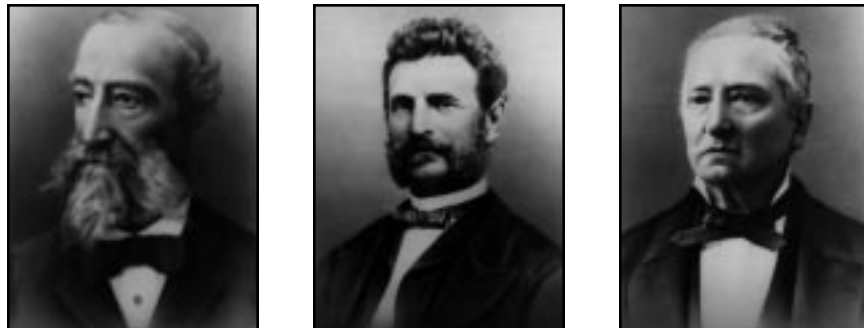
This revised edition reflects recent changes in the Supreme Court's membership, as well as changes in internal operating practices and procedures that govern the way cases progress through the court.

I hope you will find this booklet useful in learning more about the Supreme Court and the judicial branch of government. An informed citizenry is vital to the preservation of our system of government.

Sincerely,

A handwritten signature in black ink that reads "Ronald M. George". The signature is fluid and cursive, with the first name "Ronald" being particularly prominent.

Ronald M. George
Chief Justice



The California Supreme Court in 1850. Pictured from left to right are Associate Justice Henry A. Lyons, Chief Justice S. Clinton Hastings, and Associate Justice Nathaniel Bennett.



The California Supreme Court in 1996. Pictured in the Sacramento courtroom from left to right are Associate Justice Ming W. Chin, Associate Justice Stanley Mosk, Associate Justice Marvin R. Baxter, Chief Justice Ronald M. George, Associate Justice Kathryn M. Werdegar, Associate Justice Joyce L. Kennard, and Associate Justice Janice R. Brown.

I. FUNCTIONS AND STRUCTURE OF THE CALIFORNIA SUPREME COURT

JURISDICTION

The Supreme Court of California is the state's highest court, and its decisions are binding on all other California state courts.

The Supreme Court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The court also has original jurisdiction in habeas corpus proceedings (Cal. Const., art. VI, § 10) and may review decisions of the Public Utilities Commission (*id.*, art. XII, § 5; Pub. Util. Code, § 1756 et seq.).

The state Constitution gives the Supreme Court the authority to review decisions of the state Courts of Appeal. (Cal. Const., art. VI, § 12.) This reviewing power enables the Supreme Court to decide important legal questions and to maintain uniformity in the law.

The state Constitution directs the Supreme Court to review all cases in which a judgment of death has been pronounced by the trial court. (Cal. Const., art. VI, § 11.) Under state law, these cases are automatically appealed. (Pen. Code, § 1239, subd. (b).)

In addition, the Supreme Court may review the recommendations of the Commission on Judicial Performance and the State Bar of California concerning the removal and suspension of judges and attorneys for misconduct.

Decisions of the Supreme Court are published in the *Official Reports*.

JUSTICES

The Supreme Court consists of a Chief Justice and six associate justices. Members of the Supreme Court are appointed by the Governor after review by the State Bar's Judicial Nominees Evaluation Commission. Appointees also must be confirmed by the Commission on Judicial Appointments. To be eligible for appointment, a person must have been a member of the State Bar of California or a judge of a court of record in this state for at least 10 years immediately preceding appointment. (Cal. Const., art. VI, § 15.)

Supreme Court justices serve 12-year terms. They must stand for confirmation for the remainder of their predecessor's unexpired term on a statewide ballot at the first gubernatorial election following their appointment. (Cal. Const., art. VI, § 16, subd. (a).)

COURT FUNDING

The Supreme Court is operated entirely from state funds, as are the state Courts of Appeal, the Judicial Council of California, and the Commission on Judicial Performance.

THE COURT'S WORKLOAD

Supreme Court filings totaled 6,838 in fiscal year 1995–96. The majority of these filings were petitions for review in cases decided by the Courts of Appeal (4,657). Twenty-five years earlier, the court recorded fewer than one-half as many filings (3,179) and petitions for hearing (2,198).

COURT PERSONNEL AND OFFICES

Court Administrator/Clerk

The Court Administrator/Clerk, appointed by the court, is the court's executive officer. The Court Administrator/Clerk is responsible for overseeing the administration and management of the court's nonjudicial functions, including supervising and directing the Clerk's Office and the Calendar Coordination Office, administering the court's personnel and budget systems, and overseeing activities relating to information systems, purchasing, and other business services. The Court Administrator/Clerk is also responsible for recruiting counsel in capital appeals and other cases; preparing the court's calendar; docketing its cases; maintaining the court's public records, filings, and documents; and advising litigants, counsel, and the public of the status of matters before the court.

The Court Administrator/Clerk is assisted by the Assistant Court Administrator/Clerk, the Chief Deputy Clerk—Los Angeles, the Automatic Appeals Monitor, several deputy clerks, and support staff. The Court Administrator/Clerk's Office is headquartered in San Francisco, with branch offices in Los Angeles and Sacramento. The Supreme Court also accepts filings at the clerk's offices of state Courts of Appeal in Fresno and San Diego.

Calendar Coordination Office

The Calendar Coordination Office, headed by the Calendar Coordinator, coordinates and expedites the flow of internal documents such as conference and calendar memoranda and circulating draft opinions.

This office advises the justices of action taken or scheduled to be taken on matters before the court; assists in setting up the schedule for hearing oral arguments; supervises the reproduction of internal documents; and maintains various lists and records by which the status of pending matters may be determined.

The Calendar Coordinator is assisted by three deputy clerks and a clerical staff.

Reporter of Decisions

The Reporter of Decisions, appointed by the court, supervises the publication of California appellate court opinions in the *Official Reports*.

The reporter ensures the editorial integrity of all opinions from filing through publication and reviews the accuracy of the editorial information included in the advance sheets and bound volumes. The standards for publication of opinions are established by California Rules of Court, rule 976.

The Reporter of Decisions is assisted by the Assistant Reporter and a staff of attorney editors.

Bailiffs

The bailiffs are responsible for the security of the court and its justices. The bailiffs also prepare the courtroom for calendar sessions, staff the court's reception area to maintain security of the court's facilities, and perform various other support duties.

The Justices' Staffs

Each justice is supported by a staff of attorneys and a secretary. Associate justices have five staff attorneys, all of whom are long-term career court employees. Traditionally, the Chief Justice has had additional staff positions to assist with administrative work. Some justices also make use of law student externs to augment their research staffs.

The Central Staffs

The court has two central staffs. The criminal central staff is composed of a director and 14 attorneys. It prepares conference memoranda in criminal matters (except automatic appeals) and State Bar disciplinary proceedings. The civil central staff is composed of a director and 13 attorneys and prepares conference memoranda in civil matters and some other State Bar proceedings. Both central staffs consist primarily of long-term career court employees. Each central staff also makes use of law student externs.

Law Library

Established in 1868, the Supreme Court's law library serves as a repository for source materials that aid the court and its staff in legal research. The library's 150,000 volumes are supplemented by several computerized legal research systems.

The law library is staffed by a librarian, an assistant librarian, and two library assistants who are also responsible for maintaining and updating the 50,000 volumes that are kept in the offices of the justices and their staffs.



The Supreme Court was based in Sacramento from the mid-1850s until the early 1870s. During most of that period, the court was located in the B.F. Hastings Building, which is depicted above.



A view of Second Street in Sacramento during the 1800s. The B.F. Hastings Building can be seen on the right.

II. HISTORY OF THE CALIFORNIA SUPREME COURT

The history of the Supreme Court of California reflects the history of California itself.

After a long period of Spanish and Mexican rule, California was occupied by the United States in 1846 during the Mexican-American War. Mexico officially ceded California to the United States on February 2, 1848, in exchange for \$15 million. That same year, gold was discovered in California. The tumultuous events of the ensuing Gold Rush shaped many of the issues that would later be decided by the California Supreme Court.

1849 CONSTITUTION

In September 1849, 48 people convened at Colton Hall in Monterey to draft the state's first Constitution. Six weeks later, that document was completed.¹

Article VI of the new Constitution covered judicial tribunals and provided for a Supreme Court consisting of a Chief Justice and two associate justices.² The court was elected initially by the state Legislature and later by the voters in contested elections for a term of six years.

The Supreme Court was given appellate jurisdiction in all cases in which the amount in controversy was greater than \$200; cases in which the legality of a tax, toll, impost, or municipal fine was at issue; and felony matters raising questions of law. The court also had the power to issue writs of habeas corpus and all writs necessary to exercise its appellate jurisdiction.

THE FIRST JUSTICES

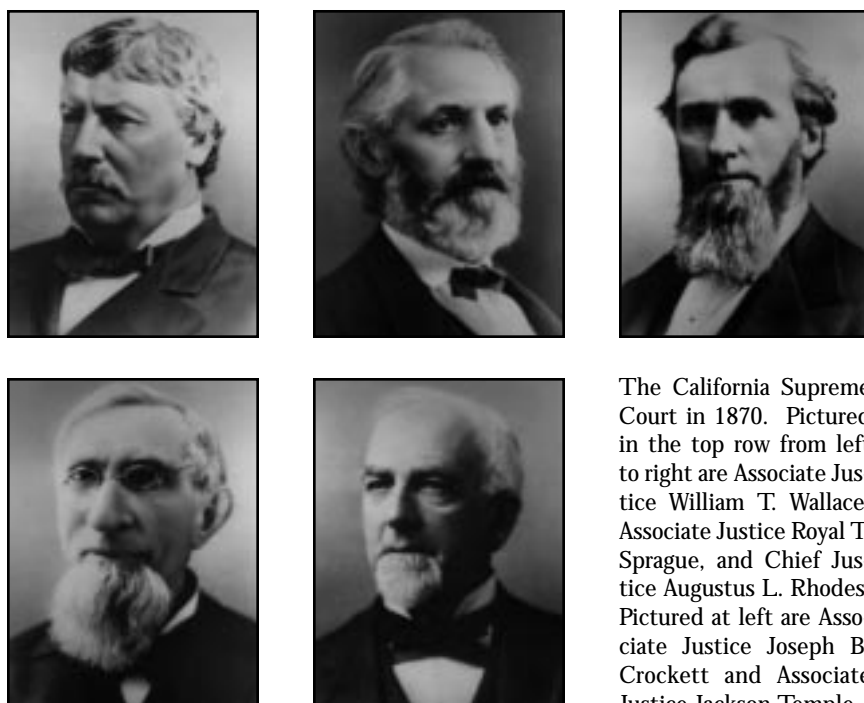
In December 1849, the Legislature elected Serranus Clinton Hastings as the first Chief Justice and H. A. Lyons and Nathaniel Bennett as the first associate justices. Hastings was a former representative to Congress from Iowa who resigned his position as Chief Justice of that state's Supreme Court to come to California. Following his service on the California Supreme Court, he became state Attorney General and founded Hastings College of the Law.

¹ See Browne, Report of the Debates in the Convention of California on the Formation of the State Constitution (1850).

² For a complete list of the Chief Justices and the associate justices from 1850 to date, see appendices I and II.



The California Supreme Court in 1857. Pictured from left to right are Associate Justice Peter H. Burnett, Chief Justice David S. Terry, and Associate Justice Stephen J. Field.



The California Supreme Court in 1870. Pictured in the top row from left to right are Associate Justice William T. Wallace, Associate Justice Royal T. Sprague, and Chief Justice Augustus L. Rhodes. Pictured at left are Associate Justice Joseph B. Crockett and Associate Justice Jackson Temple.

The Constitution of 1849 prohibited justices from running for any other office during their terms. Their salaries were \$10,000 a year in 1850.³ These were reduced in 1852 to \$8,000 and again in 1856 to \$6,000.

With a Constitution in force, California was admitted as the 31st state on September 9, 1850, without the usual preliminary step of becoming a territory.

COURT ACT OF 1851

The Legislature, in its second session, passed the Court Act of 1851. (Stats. 1851, ch. 1, p. 2; see also Stats. 1853, ch. 180, p. 287.) This act empowered the court to review on appeal judgments and intermediate orders involving the merits and necessarily affecting judgments of district courts (which were similar to today's superior courts) and the Superior Court of San Francisco (the jurisdiction of which was coextensive with the district courts).⁴

On appeal, the court also could review orders granting or refusing a new trial or affecting substantial rights. Proceedings of inferior tribunals, boards, or officers could be reviewed by writ of certiorari.

Much of the litigation during this period dealt with the legal concerns of the many people who flocked to the state during the Gold Rush. Many of these cases involved title to property, mining and agricultural issues, and rights to water and minerals on public lands, and often these decisions were not published. Until 1857, the court issued less than one volume of official reports per year.

1862 CONSTITUTIONAL AMENDMENT

Article VI of the Constitution underwent its first revision in 1862. This amendment increased the size of the court to five by providing two additional associate justices. Terms of office were increased from six to ten years.

The 1862 amendment also provided for the election of justices at special, rather than general, elections. It further specified that incumbent justices were permitted to become candidates for other judicial offices, and that their salaries could not be increased or decreased during their terms.

The amendment added to the court's appellate jurisdiction all equity matters; matters involving title or possession of real property; and cases from the probate courts. The amount-in-controversy limit was raised to \$300. The amendment referred for the first time to the original jurisdiction of the court, and the court's power to issue extraordinary writs in the exercise of that jurisdiction was recognized.

Procedural rules for counsel became more specific at this time, with the

³ McMurray, *An Historical Sketch of the Supreme Court of California*, in *Historical and Contemporary Review of Bench and Bar in California* (The Recorder Printing and Publishing Co. 1926) p. 9.

⁴ Blume, *California Courts in Historical Perspective* (1970) 22 Hastings L.J. 121.

imposition of stricter filing deadlines and forms for briefs. Speedier publication of court opinions also was encouraged.

The Court Act of 1853 was repealed and a new act passed to reflect the 1862 changes. (Stats. 1863, ch. 260, p. 333.)

In 1871, the California Code Commissioners drafted the Code of Civil Procedure. One section of the code sought to clarify the appellate jurisdiction of the Supreme Court by reference to terms previously construed by the court. With minor revisions, the Legislature adopted the code in 1872.

1879 CONSTITUTIONAL CONVENTION

The people of California voted on September 5, 1877, to hold a state convention to revise the Constitution. The Legislature responded by passing an enabling act authorizing the election of 152 delegates who were to meet in Sacramento on September 28, 1878.⁵

The call for a convention grew largely out of the economic depression and political controversy of the time. The Workingmen's Party, a local version of the widespread Granger movement of the 1870s, played a major role in the demand for constitutional change.

California's growth in population—from 100,000 in 1849 to 800,000 in 1877—reflected the state's new economic diversity. The gold mining concerns that had dominated the first Constitution gave way to agricultural, commercial, and manufacturing interests.

Of the 152 delegates, 57 were lawyers, 19 of whom served on the Judiciary Committee under the leadership of Samuel M. Wilson, a San Francisco corporate attorney. When the convention adjourned in March of 1879, major changes had been made in California's judicial system.

The Supreme Court was now to consist of a Chief Justice and six associate justices who could consider matters in bank or in two 3-judge departments. Their terms of office were increased from 10 to 12 years. The position of Chief Justice was given specific official duties, including the power to assign justices to departments.

Appellate jurisdiction was once again expanded, this time to include cases of forcible entry and detainer, proceedings in insolvency, actions to prevent or abate a nuisance, and questions of law in criminal cases prosecuted by indictment or information in courts of record.

Another noteworthy provision of the 1879 Constitution was the creation of a Supreme Court Reporter of Decisions. All opinions were now required to be in writing.

Finally, the new Constitution, which was adopted by the voters on May 7, 1879, provided for the removal of judges by the Legislature in certain instances.

⁵ See Willis & Stockton, *Debates and Proceedings of the Constitutional Convention of the State of California* (1880).



The California Supreme Court in 1890. Pictured from left to right are Associate Justice John R. Sharpstein, Associate Justice Charles N. Fox, Associate Justice John D. Works, Chief Justice William H. Beatty, Associate Justice James D. Thornton, Associate Justice A. Van R. Paterson, and Associate Justice Thomas B. McFarland.



The California Supreme Court in 1896. Pictured from left to right are Associate Justice Frederick W. Henshaw, Associate Justice W. C. Van Fleet, Associate Justice Thomas B. McFarland, Associate Justice Charles H. Garoutte, Chief Justice William H. Beatty, Associate Justice Jackson Temple, and Associate Justice Ralph C. Harrison.

SUPREME COURT SESSIONS

The question of where to hold Supreme Court sessions was a topic of lively debate in the early history of California. The first court convened in San Francisco, where it remained until 1854, when the Legislature mandated its relocation to the state capital. After a separate legislative struggle, Sacramento was finally chosen to be the official seat of government. Because of inadequate space in Sacramento, however, the court spent most of 1854 in San Jose.

The court then went to the capital but moved back to San Francisco in the early 1870s because of that city's growing commercial importance. By 1874 this arrangement was codified, with the court holding its January and June terms (oral argument calendars) in San Francisco and its April and October terms in Sacramento. (Stats. 1873–1874, p. 941.) In 1878 the number of terms was increased from four to six, with the two additional sessions in Los Angeles.

At the 1879 Constitutional Convention, the Judiciary Committee had given considerable thought to the pros and cons of a “Court on wheels,”⁶ which would hold sessions in different locations. Some delegates felt that such an arrangement would be too expensive and time-consuming; others expressed concerns regarding the climate and the quality of water and wine in the various locations.⁷ The committee decided to leave the whole matter to the Legislature, which gradually increased the number of sessions in the three cities.

COPING WITH AN INCREASING CASELOAD

The Supreme Court's new departmental structure was intended to help the court handle its growing caseload more efficiently. By 1882, however, a backlog had built up, with a two-year wait for a case to be decided. In an effort to reduce this delay, the court dispensed with oral argument and spent its time deciding cases on the briefs that were submitted.

In 1885, the Legislature directed the court to appoint three commissioners to help it dispose of the backlog of cases. Although their number was increased to five in 1889, the commissioners did not sufficiently alleviate the court's workload.

CREATION OF THE COURTS OF APPEAL

In 1904, three District Courts of Appeal were created and the commissioner positions abolished. These new courts were to handle appeals in the “ordinary current of cases,” leaving appeals in the “great and important” cases to the higher court.⁸ The Supreme Court would now handle superior court

⁶ Blume, *supra*, at p. 163.

⁷ *Ibid.*; McMurray, *supra*, at p. 14.

⁸ Blume, *supra*, at pp. 173–174.



The California Supreme Court, 1906-1908. Pictured standing from left to right are Associate Justice William G. Lorigan, Associate Justice Lucien Shaw, Associate Justice Frank M. Angellotti, and Associate Justice M. C. Sloss. Pictured seated from left to right are Associate Justice Thomas B. McFarland, Chief Justice William H. Beatty, and Associate Justice Frederick W. Henshaw.



The California Supreme Court in 1914. Pictured from left to right are Associate Justice Henry A. Melvin, Associate Justice William G. Lorigan, Associate Justice Frederick W. Henshaw, Chief Justice William H. Beatty, Associate Justice Lucien Shaw, Associate Justice Frank M. Angellotti, and Associate Justice M. C. Sloss.

appeals only in specified areas such as real property, equity, and cases involving more than \$2,000.

The Supreme Court also was given the power to transfer a case from a Court of Appeal to itself, from itself to a Court of Appeal, or from one Court of Appeal to another. This provision gave the Supreme Court the power to rule on the most important legal questions and to resolve decisional conflicts among the appellate districts.

In 1928, article VI was amended to permit the creation of divisions within the districts of the Courts of Appeal and to give the Legislature the power to create additional districts and divisions as needed.

SUBSEQUENT CONSTITUTIONAL AMENDMENTS

A 1926 amendment to article VI established the Judicial Council. The council was directed to improve the administration of justice and enact rules of court practice and procedure. The creation of the Judicial Council greatly increased the administrative duties of the Chief Justice, who chairs the council.

In 1927, article VI was amended to create the State Bar, a public corporation to which all attorneys licensed to practice law in California must belong. This amendment required that candidates for admission to practice law be examined by the State Bar, and that the bar thereafter certify to the Supreme Court those applicants meeting admission requirements. In addition, the Supreme Court's approval was required before State Bar Rules of Professional Conduct became binding on attorneys, and the court undertook responsibility to issue orders in attorney discipline matters.

In 1934, article VI was amended to establish noncontested judicial elections for the appellate courts. Justices' names would henceforth appear on the ballot with the voters being asked to decide whether or not the justices should be elected for a full term or the remainder of their predecessors' unexpired terms.

At the same time, the Commission on Qualifications was established to review appointments by the Governor to the Supreme Court and Courts of Appeal. All such appointments required approval by a majority of the commission in order to take effect. In 1960, the name of the panel was changed to the Commission on Judicial Appointments. The Chief Justice chairs the commission, which also includes the Attorney General and the senior Presiding Justice of the Court of Appeal from the district involved (or statewide in the case of a Supreme Court appointment).

1966 CONSTITUTIONAL REVISION

Article VI was again amended in 1966. Although few substantive changes were made, the amendments eliminated obsolete provisions and formalized

the various developments since the Constitutional Convention of 1879. The Supreme Court department system was officially abolished and jurisdiction of the appellate courts clarified.

The Supreme Court continued its original jurisdiction in writs of habeas corpus, mandamus, certiorari, and prohibition. The court also retained its ability to transfer to itself cases before the Courts of Appeal, either before or after decision by those courts. In addition, as has been the rule since 1904, the Supreme Court was required to review all cases in which the death penalty has been pronounced.

1984 CONSTITUTIONAL AMENDMENT

California voters adopted the most recent revision of article VI in November 1984. This amendment, which appeared on the ballot as Proposition 32, allows the Supreme Court to review decisions of the Court of Appeal rather than judgments of the superior court and to limit that review to specified issues.

Designed to help the court run more efficiently, the amendment gives the justices more time to focus on important questions of law. The change brought the California Supreme Court into conformity with the practices of the United States Supreme Court and the high courts of virtually every other state.



The California Supreme Court in 1920. Pictured seated from left to right are Associate Justice William P. Lawlor, Associate Justice Lucien Shaw, Chief Justice Frank M. Angellotti, and Associate Justice Henry A. Melvin. Pictured standing from left to right are Associate Justice Thomas J. Lennon, Associate Justice Curtis D. Wilbur, and Associate Justice Warren Olney, Jr.

III. RECENT DEVELOPMENTS

NINETY-DAY POLICY

Effective January 1, 1989, the Supreme Court implemented a new policy designed to expedite the processing and discussion of cases before the court. Under the new policy, the court files written opinions within 90 days after oral argument or post-argument briefing, unless submission is vacated by an order of the Chief Justice detailing the reasons therefor and providing for prompt resubmission.

QUARTERS

For almost 75 years, the Supreme Court was located in the “Beaux Arts” State Building in San Francisco’s historic Civic Center. The building was severely damaged by the 1989 Loma Prieta earthquake and, in February 1991, the Supreme Court relocated to new quarters in San Francisco’s South of Market business district.

Even before the earthquake, however, the court had planned to move from the State Building to make way for a substantial restoration project that would enable the building to meet the needs of a modern court, including a safe workplace. When that restoration is completed sometime within the next five years, the court will return to the State Building.

In the meantime, for the first time in many years, the Supreme Court has adequate office space and modern facilities.

SUPREME COURT HISTORICAL SOCIETY

The California Supreme Court Historical Society was established in 1991 as a nonprofit public benefit corporation dedicated to preserving the history of the California Supreme Court and promoting public knowledge and appreciation of that history.

The society has sponsored a number of educational programs, including the first formal tours of the court in recent history. Other activities include an oral history of Supreme Court justices and publication of scholarly articles on the court’s history and decisions.

TECHNOLOGICAL ADVANCES

The court has upgraded its computer system to include improved word-processing capabilities and speedier on-line access to court documents throughout the court.

Among the technological improvements:

- ❖ Conference and calendar memoranda, opinions, and other materials are accessible by computer. The court electronically circulates these and other documents to all chambers and staffs in order to facilitate discussion of issues among the justices and to inform the staff of the latest versions of circulating opinions.
- ❖ Several computerized legal research programs are available to all justices and staff attorneys.
- ❖ Numerous management reports assist the court in tracking cases and monitoring the effectiveness of current policies and procedures governing the decision-making process.
- ❖ Automated case files in the Clerk's Office make detailed case data readily available to all Supreme Court staff and ease the burden of manually recording and tracking events in the thousands of matters filed every year.
- ❖ Automated record processing allows court staff to generate letters, orders, and other documents using data in the case files.

PUBLIC ACCESS TO THE COURT'S WORK

To increase public access to the work of the state appellate courts, slip opinions⁹ of both the Supreme Court and Courts of Appeal are posted on the State of California Judicial Branch Web site, <http://www.courtinfo.ca.gov>. Supreme Court opinions are posted at the time of filing; Court of Appeal opinions are generally posted within hours of filing. The minutes and calendars of the Supreme Court also are posted on the Web site, and plans are under way to post the minutes and calendars of the Courts of Appeal as well.

Electronic publication of opinions and minutes is a byproduct of the use of computer technology for research, opinion writing, and case management, and is provided to the public by the Administrative Office of the Courts in cooperation with the Reporter of Decisions. There is no charge for use of these publication services.

The Supreme Court also provides a computer terminal in its clerk's office to improve public access to detailed case docket information. The terminal allows the public and press to quickly obtain accurate information about cases before the court.

⁹ "Slip opinions" are "as filed" opinions of the court that have not been enhanced and edited for publication in the *California Official Reports*.

APPOINTMENT OF COUNSEL IN CAPITAL APPEALS

Securing counsel for unrepresented indigents on death row is a primary concern of the California Supreme Court. The court has undertaken a series of innovative measures in order to attract additional qualified counsel. The position of Automatic Appeals Monitor was created in 1992 to recruit, screen, and recommend counsel for appointment to capital appeals and related state habeas corpus proceedings.

Since then, the Supreme Court has implemented a number of improvements in the procedures governing the appointment and payment of counsel in death penalty appeals. Both the new procedures and the appointment of an Automatic Appeals Monitor have helped secure counsel in more capital cases, but a substantial backlog remains. In 1995, as part of its recruitment efforts, the court released an instructional video providing a comprehensive overview of counsel's responsibilities in order to assist attorneys in handling such appeals. In that same year, the court appointed counsel for 26 death row inmates.

OPTIONAL PAYMENT SYSTEM FOR COURT-APPOINTED COUNSEL IN DEATH PENALTY APPEALS

Effective January 1, 1994, the Supreme Court adopted a new payment system for death penalty appeals that allows appointed counsel the option of a fixed fee for all services and expenses as an alternative to the traditional hourly billing method. The new fixed-fee payment system, which the court adopted after soliciting and considering public comments, has significantly reduced the administrative burdens on appointed counsel and has reduced delays in the payment of compensation.



The California Supreme Court in 1922. Pictured from left to right are Associate Justice Charles A. Shurtleff, Associate Justice Thomas J. Lennon, Associate Justice William P. Lawlor, Chief Justice Lucien Shaw, Associate Justice Curtis D. Wilbur, Associate Justice William A. Sloane, and Associate Justice William H. Waste.



The California Supreme Court in 1927. Pictured from left to right are Associate Justice John W. Preston, Associate Justice John W. Shenk, Associate Justice Emmet Seawell, Chief Justice William H. Waste, Associate Justice John E. Richards, Associate Justice Jesse W. Curtis, and Associate Justice William H. Langdon.



The California Supreme Court in 1939. Pictured from left to right are Associate Justice Jesse W. Carter, Associate Justice Douglas L. Edmonds, Associate Justice John W. Shenk, Chief Justice William H. Waste, Associate Justice Jesse W. Curtis, Associate Justice Frederick W. Houser, and Associate Justice Phil S. Gibson.

IV. DESCRIPTION OF CALIFORNIA SUPREME COURT OPERATIONS

The function of the Supreme Court is to preside over the orderly development of the law. It is the court of last resort on questions of state law.

Cases other than automatic appeals of death judgments normally come before the court either in the form of petitions for review of decisions by the Courts of Appeal or as petitions for extraordinary writs of mandate, prohibition, certiorari, or habeas corpus. In these cases, the court must decide whether to accept the matter for decision. In exercising its discretion to do so, the court seeks to secure uniformity of decision and settlement of important legal questions of statewide concern. The court decides matters accepted for consideration by written opinions that determine the legal issues raised and serve to guide the lower courts in applying the law.

WEEKLY CONFERENCE:

The Court's Discretionary Decision Whether to Accept a Case

Like the United States Supreme Court, the California Supreme Court has discretionary jurisdiction over most of the matters presented to it. Thus, with the exception of a relatively small number of appeals that come to the court directly, it has discretion to decide whether or not it will accept any particular case for review and decision on the merits.

When a petition for such discretionary review is filed with the court, it is scheduled for one of the court's weekly Wednesday conferences, at which time the court will decide whether to accept the case. The court has 60 days from the filing of the petition in which to decide whether to accept the case, and may extend that period by up to 30 additional days. At the time the conference date is selected, the matter is assigned by the Calendar Coordinator to one of the central staffs for preparation of a "conference memorandum." Overflow petitions may be assigned on a rotational basis to one of the justices.

The conference memorandum summarizes the relevant procedural or evidentiary facts of the case, any pertinent rulings in the matter by inferior courts or administrative agencies, and the issues raised by the parties. The conference memorandum also contains a discussion of the merits of the issues and a recommendation as to whether the court should accept the case.

The justices receive copies of these memoranda during the week preceding the scheduled conference. The justices use the memoranda to assist them in assessing the merits of the cases and the importance of the issues involved.

If a justice desires, he or she may request that a matter be continued to a later conference in order to consider the matter further and/or to circulate a “supplemental conference memorandum” advancing an analysis or recommendation either supporting or differing from that of the original conference memorandum.

At a typical conference, the court considers from 120 to 180 matters, primarily petitions for review and original proceedings. For a petition for review to be granted or an alternative writ or peremptory writ or an order to show cause to be issued in an original proceeding, at least four justices must concur. When granting review, or at any time thereafter, the court may specify which of the issues presented should be briefed and argued.

Many of the cases accepted by the court at its weekly conferences will be argued orally before the full court and will be decided by a full written opinion. There are, however, exceptions.

For example, many cases that appear on conference raise an issue that is already before the court in another case. In that event, the court may decide to “grant and hold” the new case until its opinion in the “lead” case is filed. When the lead opinion becomes final, cases that have been “held” for that opinion usually are transferred to the Court of Appeal for reconsideration in light of the lead opinion, or review may be dismissed as “improvidently granted” if it appears that the decision of the lower court was consistent with the opinion.

In other instances, the court may transfer a case to a Court of Appeal for further consideration in light of a case decided after the Court of Appeal’s decision, or the court may deem it appropriate to make an alternative writ or an order to show cause returnable before a lower court.

In fiscal year 1995–96, 4,657 petitions for review and 1,803 original proceedings were filed in the Supreme Court. Approximately 5 percent of the petitions for review were granted, although many of these cases will not result in a written opinion by the court because they fall in the “grant and hold” category or are immediately transferred to a lower court.

AFTER A CASE HAS BEEN ACCEPTED: *The Calendar Memorandum and Oral Argument*

After a case has been accepted for review (and if it is not being “held” for a lead case), the Chief Justice assigns it to one of the justices who voted to grant review for preparation of a “calendar memorandum.”

The justice to whom a case has been assigned prepares and circulates a calendar memorandum setting out the facts and legal issues, and proposing resolution of those issues. Soon thereafter, each justice states his or her “preliminary response” to the calendar memorandum, and indicates whether he or she will request changes, or will concur or dissent. Changes may be made by the author of the calendar memorandum and, if appropriate, tentative concurring and dissenting memoranda may be circulated.

When at least a majority of the justices have tentatively concurred in a proposed disposition, the Chief Justice places the case on a pre-argument conference. If a majority of the justices agree that the matter is ready to be heard, it is scheduled for oral argument. If a majority of the justices indicate they will tentatively dissent from the original calendar memorandum, and unless the original author agrees to change his or her view to accommodate the majority, the Chief Justice resets the matter for further discussion or reassigns the matter to one of the dissenting justices. Thereafter, when a majority of the justices indicate they tentatively concur in the calendar memorandum or in a revised or new calendar memorandum, the Chief Justice sets the matter for oral argument.

The Supreme Court hears oral argument during one week each month from September through June. Each year, four oral argument calendars are held in Los Angeles, four in San Francisco, and two in Sacramento. Throughout the year, the court remains open and engaged in its other work, which includes researching and drafting calendar memoranda and opinions, and conducting its weekly case conference.

A cause is “submitted” for decision after oral argument, or at the time all briefing is complete if post-argument briefs are permitted. Except in unusual circumstances, the court must issue its decision within 90 days after submission.

AFTER ORAL ARGUMENT:

The Assignment, Preparation, and Circulation of Proposed Opinions

A conference is held on each case as soon as possible after oral argument. After this conference the justices take a tentative vote on the case. If the recommendations of the justice who prepared the calendar memorandum are tentatively favored by a majority of the court, then that justice usually will retain the case for the drafting of a proposed majority opinion. If the majority view is contrary to that of the author of the calendar memorandum, the Chief Justice will assign one of the justices comprising the majority to write the proposed opinion.

As soon as possible after the matter is submitted to the court, the assigned justice circulates a proposed majority opinion. Justices who deem it appropriate to write and circulate dissenting or concurring opinions are afforded time in which to do so, and the author of the proposed majority opinion in turn is given an opportunity to respond to any such opinion. During this process, the original copy of each opinion is kept in the Calendar Coordination Office, and any justice may, at any time, sign, delete his or her signature, or “OK” his or her signature (as required whenever a change is made in the opinion or another justice circulates a concurring or dissenting opinion).

THE FINAL STEP: *Filing the Court's Decision*

When the deliberation and drafting process has been completed and all justices have subscribed to the majority or timely circulated concurring or dissenting opinions, a “Notice of Forthcoming Filing” is posted in the Clerk’s Office.¹⁰

For the convenience of the litigants, the public, and the press, decisions are normally filed at two set times each week—Mondays and Thursdays at 10:00 a.m. At those times, the decisions are sent to the Clerk’s Office, stamped “filed,” and made public.

A decision does not become final until 30 days after it has been filed. The parties may petition for rehearing during the first 15 days after the filing date. The court may extend the 30-day period by as much as 60 additional days in order to consider on motion of a party or on its own motion whether to grant a petition for rehearing or to modify its decision.



The California Supreme Court in 1949. Pictured seated from left to right are Associate Justice John W. Shenk, Chief Justice Phil S. Gibson, and Associate Justice Douglas L. Edmonds. Pictured standing from left to right are Associate Justice B. Rey Schauer, Associate Justice Jesse W. Carter, Associate Justice Roger J. Traynor, and Associate Justice Homer R. Spence.

¹⁰ The only exception to this standard operating procedure occurs on the rare occasion when an opinion in one pending case refers to an opinion in another pending case. Should the former be ready for filing before the latter, the former is retained until the latter also is ready for filing.



Charter Day, University of California, March 24, 1954. Pictured from left to right are Associate Justice B. Rey Schauer, Associate Justice Jesse W. Carter, Associate Justice John W. Shenk, Chief Justice Earl Warren of the Supreme Court of the United States, Chief Justice Phil S. Gibson, Associate Justice Douglas L. Edmonds, Associate Justice Roger J. Traynor, and Associate Justice Homer R. Spence.



The California Supreme Court in 1960. Pictured in the courtroom, Library and Courts Building, Sacramento, from left to right are Associate Justice Thomas P. White, Associate Justice Marshall F. McComb, Associate Justice Roger J. Traynor, Chief Justice Phil S. Gibson, Associate Justice B. Rey Schauer, Associate Justice Raymond E. Peters, and Associate Justice Maurice T. Dooling, Jr.



The California Supreme Court in 1964. Seated from left to right are Associate Justice B. Rey Schauer, Chief Justice Roger J. Traynor, and Associate Justice Marshall F. McComb. Standing from left to right are Associate Justice Paul Peek, Associate Justice Raymond E. Peters, Associate Justice Mathew O. Tobriner, and Associate Justice Stanley Mosk.



The California Supreme Court, Special Session in conjunction with the Old Monterey Bicentennial, Colton Hall, Monterey, May 1, 1970. Pictured from left to right are Associate Justice Louis H. Burke, Associate Justice Mathew O. Tobriner, Associate Justice Marshall F. McComb, Chief Justice Donald R. Wright, Associate Justice Raymond E. Peters, Associate Justice Stanley Mosk, and Associate Justice Raymond L. Sullivan.

V. INTERNAL OPERATING PRACTICES AND PROCEDURES OF THE CALIFORNIA SUPREME COURT

(Revised January 22, 1997)

The following internal operating practices and procedures are observed by the California Supreme Court in the performance of its duties.¹¹

I. ACTING CHIEF JUSTICE

An Acting Chief Justice performs the functions of the Chief Justice when the Chief Justice is absent or unable to participate in a matter. The Chief Justice, pursuant to constitutional authority (Cal. Const., art. VI § 6), selects on a rotational basis an associate justice to serve as Acting Chief Justice.

II. TRANSFER OF CASES

A. All transfers to the Supreme Court of a cause in a Court of Appeal pursuant to article VI, section 12 of the California Constitution are accomplished by order of the Chief Justice made on a vote of four justices assenting thereto.

B. Unless otherwise ordered by the Chief Justice, all applications for writs of mandate and/or prohibition that have not previously been filed with the proper Court of Appeal are transferred to such court.

C. The Supreme Court exercises exclusive jurisdiction over all matters relating to review of Public Utility Commission cases (Cal. Rules of Court, rule 58) and State Bar proceedings (*id.*, rule 952 et seq.).

III. CONFERENCES

A. Unless otherwise directed by the Chief Justice, regular conferences are held each Wednesday, excluding the Wednesday of regular calendar sessions and the first Wednesday of July and August.

B. Special conferences may be called by the Chief Justice whenever deemed necessary or desirable.

¹¹ Various provisions of the California Constitution, codes, and rules of court, as well as numerous provisions of the decisional law, bear on how the court functions. The court's internal operating practices and procedures should be considered in that context.

These practices and procedures may be amended from time to time, as needed, to facilitate the court's ability to discharge its duties.

C. Four justices constitute a quorum for any regular or special conference.

D. A judge assigned by the Chief Justice to assist the court, or to act in the place of a regular member of the court who is disqualified or otherwise unable to act, may be counted to obtain a quorum for a conference. A regular member of the court, present at a conference, who is not participating in a particular matter is not counted in determining a quorum for that matter.

E. A justice who has ascertained that he or she will not be present at a conference or will not be participating in a particular matter will notify the Chief Justice or the Calendar Coordinator, as specified by sections XI(C) and XII(A). The absent justice may leave his or her votes on any given conference matter, and may be counted to constitute a quorum for each such conference matter.

IV. CONFERENCE MEMORANDA

A. Unless otherwise directed by the Chief Justice, a conference memorandum is prepared for each petition requiring conference consideration or action.

B. Upon the filing of a petition, motion, or application, the Calendar Coordinator, under the direction of the Chief Justice, assigns it a conference date and refers it to one of the central staffs or a member of the court for preparation of a conference memorandum as follows:

1. Petitions in or derived from criminal cases, to the criminal central staff.

2. Applications for writs of habeas corpus arising out of criminal proceedings, to the criminal central staff.

3. Petitions for review of State Bar proceedings pursuant to rule 952 et seq. of the California Rules of Court and applications to the Supreme Court pursuant to article V, section 8 of the California Constitution for a recommendation regarding the granting of a pardon or commutation to a person twice convicted of a felony, to the criminal central staff.

4. Petitions in civil cases, to the civil central staff.

5. All other petitions and applications, including overflow petitions that cannot be handled by the existing central staffs, to the six associate justices and the Chief Justice in rotation so that, at the end of a given period of time, each justice will have been assigned an equal number of petitions. Petitions for rehearing after decision in the Supreme Court are referred to a justice, other than the author, who concurred in the majority opinion.

C. The recommendation set forth in a conference memorandum will generally be one of the following: (1) "Grant," (2) "Grant and Hold," (3) "Grant and Transfer," (4) "Deny," (5) "Submitted," (6) "Denial Submitted," and (7) "Deny and Depublish." The designation "submitted" is used when the author

believes the case warrants special discussion. The designation “denial submitted” is used when the author believes the petition should be denied, but nevertheless believes some ground exists that could arguably justify a grant, or an issue is raised that otherwise warrants discussion by the court. The designation “deny and depublish” is used when the author does not believe the decision warrants review, but nevertheless believes the opinion is potentially misleading and should not be relied on as precedent.

D. The author of the conference memorandum assigns it to either the “A” or the “B” list. Cases assigned to the “A” list include all those in which the recommendation is to grant or take affirmative action of some kind, e.g., “grant and transfer” or “deny and depublish,” or in which the author believes denial is appropriate, but that the case poses questions that deserve special attention. Cases assigned to the “B” list concern routine matters, or application of settled law.

E. Conference memoranda are delivered by the author to the Calendar Coordinator for reproduction and distribution to the justices no later than the Tuesday of the week before the conference, thus providing ample time for the justices and their staffs to review the petition and the court’s internal memoranda.

F. The court’s calendar coordinator divides the weekly conference agenda into an “A” and “B” list, based on the designation appearing on each conference memorandum.

G. Matters appearing on the “A” list are called and considered at the conference for which they are scheduled. Before or after a vote is taken, any justice may request that a case be put over to a subsequent conference within the jurisdictional time limit for further study, preparation of a supplemental memorandum, or both. The time within which action thereon must be taken will be extended pursuant to rules 24 and 28 of the California Rules of Court, if necessary.

H. Matters appearing on the “B” list will be denied in accordance with the recommendation of the memorandum, at the conference at which they are scheduled, unless a justice requests that a case be put over to a subsequent conference within the jurisdictional time limit for further study, preparation of a supplemental memorandum, or both.

I. In any case in which the petition, application, or motion is denied, a justice may request that his or her vote be recorded in the court minutes.

J. When a justice is unavailable or disqualified to participate in a vote on a petition for review or other matter and four justices cannot agree on a disposition, the Chief Justice, pursuant to constitutional authority (Cal. Const., art. VI, § 6), assigns on a rotational basis a Court of Appeal justice as a pro tempore justice to participate in the vote on the petition or matter. The assigned justice is furnished all pertinent petitions, motions, applications, answers, memoranda, and other material.

K. Either at the time review is granted, or at any time thereafter, the court may specify which of the issues presented should be briefed and argued.

V. CALENDAR SESSIONS FOR ORAL ARGUMENT

Unless otherwise ordered by the court, regular sessions of the court are held each year, on a day or days as determined by the Chief Justice, as follows: at Los Angeles during the months of January, April, June, and October; at San Francisco during the months of February, May, September, and December; and at Sacramento during the months of March and November. No regular session is held during July and August.

Unless otherwise ordered by the Chief Justice, the court convenes at 9:00 a.m. Special sessions are held by order of the Chief Justice or by order on a vote of four justices assenting thereto.

Unless otherwise ordered, only one counsel may be heard for each side. Counsel wishing to divide the time for oral argument must request permission from the Court not later than 10 days after the case has been set for oral argument. In no event shall oral argument be divided into segments of less than 10 minutes, except that one counsel for the opening side (unless additional counsel are so authorized) may reserve a portion of his or her allotted time for rebuttal. (Adopted eff. April 29, 1997.)

VI. CALENDARS AND CALENDAR MEMORANDA

A. The purpose of the calendar memorandum is to present the facts and legal issues, and to propose a resolution of the legal issues.

B. At the request of the justice preparing a calendar memorandum, or on direction of the Chief Justice, or on the affirmative vote of a majority of the court, the Clerk's Office will request counsel for the parties to be prepared to argue and to submit additional briefs on any points that are deemed omitted or inadequately covered by the briefs or in which the court is particularly interested.

C. In assigning cases for the preparation of calendar memoranda, the Chief Justice takes into account the following considerations, but may depart from these considerations for the purpose of equalizing the workload of the justices or expediting the work of the court:

1. The case is assigned to one of the justices who voted for review. If a case involves substantially the same issues as one already assigned for preparation of a calendar memorandum, it may be assigned to the justice who has the similar case. Preference in case assignments may be given to a justice who authored the conference memorandum or supplemental conference memorandum on which the petition was granted, unless other factors, such as equalization of workload, suggest a different assignment.

2. Granted petitions in other matters and State Bar proceedings originally referred to the central staffs are generally assigned to the justices in such a manner as to equalize each justice's allotment of cases.

3. Appeals in cases in which the death penalty has been imposed are assigned in rotation as they are filed.

4. When a rehearing has been granted and a supplemental calendar memorandum is needed, the matter will ordinarily be assigned to the justice who prepared the prior opinion if it appears that he or she can present the views of the majority. Otherwise, the case will be assigned to a justice who is able to do so.

D. The court's general procedures for circulation of calendar memoranda, etc., are as follows:

1. The justice to whom a case is assigned prepares and circulates a calendar memorandum within a prescribed time after the filing of the last brief. When the calendar memorandum circulates, the Calendar Coordinator distributes copies of the briefs to each justice. The record remains with the Calendar Coordinator, to be borrowed as needed by a justice or his or her staff.

2. Within a prescribed time after the calendar memorandum circulates, each justice states his or her preliminary response to the calendar memorandum (i.e., that he or she concurs, concurs with reservations, is doubtful, or does not concur). Each justice also indicates whether he or she intends to write a separate concurring or dissenting calendar memorandum in the case. If it appears from the preliminary responses that a majority of the justices concur in the original calendar memorandum, the Chief Justice places the case on a pre-argument conference (§ VI(D)4, *post*). If it appears from the preliminary responses that a majority of the justices will probably not concur in the original calendar memorandum or a modified version of that memorandum, the Chief Justice places the matter on a conference for discussion or reassigns the case.

3. Each justice who wishes to write a concurring or dissenting calendar memorandum does so and circulates that memorandum within a prescribed time after the original calendar memorandum circulates. Soon after any concurring or dissenting calendar memorandum circulates, each justice either confirms his or her agreement with the original calendar memorandum or indicates his or her agreement with the concurring or dissenting calendar memorandum. If the original calendar memorandum thereby loses its tentative majority, the Chief Justice places the matter on a conference for discussion or reassigns the case.

4. The Chief Justice convenes a pre-argument conference at least once each month. The purpose of the conference is to identify those

cases that appear ready for oral argument. The Chief Justice constructs the calendars from those cases.

The Chief Justice places on the agenda of the conference any case in which all concurring or dissenting calendar memoranda have circulated and the “majority” calendar memorandum has been approved by at least four justices or is likely to be approved by four justices at the conference. The Chief Justice also includes on the agenda any case in which discussion could facilitate resolution of the issues.

VII. SUBMISSION

A. A cause is submitted when the court has heard oral argument or has approved a waiver of argument and the time has passed for filing all briefs and papers, including any supplementary brief permitted by the court.

B. Submission may be vacated only by an order of the Chief Justice stating in detail the reasons therefor. The order shall provide for prompt resubmission of the cause.

VIII. ASSIGNMENTS FOR PREPARATION OF OPINIONS

A. After argument the Chief Justice convenes a conference to determine whether the calendar memorandum continues to represent the views of a majority of the justices. In light of that discussion, the Chief Justice assigns the case for opinion.

B. The Chief Justice assigns the cases for preparation of opinions in the following manner:

1. If a majority of the justices agree with the disposition suggested in the calendar memorandum, ordinarily the case is assigned to the author of that memorandum.

2. If a majority of the justices disagree with the disposition reached in the memorandum, the case is reassigned to one of the majority.

3. When a case is argued on rehearing, it ordinarily remains with the justice who prepared the prior opinion or the supplemental calendar memorandum if it appears that he or she can express the majority view. If he or she does not agree with the majority view, the case is reassigned to a justice who is a member of the majority.

4. In making assignments pursuant to these guidelines, the Chief Justice takes several considerations into account, including the following: (a) the fair distribution of work among the members of the court; (b) the likelihood that a justice can express the view of the majority of the court in a particular case; (c) the amount of work he or she has done on that case or on the issues involved; and (d) the status of the unfiled cases theretofore assigned to him or her.

C. Every reasonable effort is made by the justices to agree on the substance of opinions, and whenever possible, dissents or special concurrence on minor matters are avoided. When a justice discovers that he or she objects to something in a proposed opinion, he or she will call it to the author's attention. In addition, the objecting justice may prepare and circulate a memorandum setting forth his or her concerns and suggestions for the purpose of giving the author an opportunity to conform to any proposed changes and to remove or meet the objections raised. These practices and filing policies (see § X, *post*) reflect the court's strong preference for assuring that each opinion author be allowed sufficient time to consider the views of every justice before the opinion is released for filing.

D. Unless otherwise ordered by the Chief Justice, all opinions in State Bar and Commission on Judicial Performance cases and all memorandum opinions are issued "By the Court." All other opinions identify the author and the concurring justices unless the author desires to have the opinion appear "By the Court" and a majority of the court agree.

E. The rules of the *California Style Manual* are consulted in the preparation of opinions as well as conference and calendar memoranda.

IX. CIRCULATION OF OPINIONS

Within a prescribed time after submission, the justice to whom the case is assigned circulates the proposed majority opinion. Within a prescribed time after the proposed majority opinion circulates, all concurring or dissenting opinions circulate. If the author of the proposed majority opinion wishes to respond by change or by memorandum to any concurring or dissenting opinion, he or she does so promptly after that opinion circulates. The author of the concurring or dissenting opinion thereafter has a prescribed time in which to respond.

All opinions are cite-checked and proofread before circulating. Only copies of an opinion circulate; the original remains in the Calendar Coordination Office, where any justice may sign it.

X. FILING OF OPINIONS

Opinions are completed in time for reproduction and filing on a normal opinion-filing day. Unless good cause to vacate submission appears, the opinions are filed on or before the 90th day after submission. Internal circulation of an opinion after the 80th day following submission may result in the inability of the author of the proposed majority or of another timely circulated opinion to afford the views contained in the late circulated opinion full consideration and response. Such late circulated opinions will not be filed until at least 10 days but in no event more than 20 days after the filing of the majority opinion.

At any time before the majority or lead opinion is final, the court may modify or grant rehearing pursuant to the applicable rules of court.

XI. REVIEW OF DETERMINATIONS BY THE COMMISSION ON JUDICIAL PERFORMANCE

A petition for review of a determination by the Commission on Judicial Performance to retire, remove, censure, admonish, or disqualify a judge or former judge under subdivision (d) of section 18 of article VI of the California Constitution must address both the appropriateness of review and the merits of the commission's determination. The commission may file a response, and the petitioner a reply, within prescribed times. The petition is assigned by the Calendar Coordinator, under the direction of the Chief Justice, to the civil central staff. When briefing is complete, the staff prepares a conference memorandum in which the recommendation generally will be either to "Deny" or "Retain for Further Consideration." If a majority of the justices vote to "deny," the petition is denied, and an order to that effect is filed forthwith. If a majority vote to "retain for further consideration," the Chief Justice assigns the case to a justice who voted to retain. This justice then prepares a memorandum on the merits, which will serve as a calendar memorandum if an order granting review subsequently is filed. The court's usual procedures for circulation of calendar memoranda then are followed. Once all concurring and dissenting memoranda have circulated, and it appears there is a majority for a particular disposition, the matter is considered at a conference. If a majority vote to deny review, an order to that effect is filed forthwith. If a majority vote to grant review, an order to that effect is filed, and the case is simultaneously set for oral argument at the soonest possible time under the court's usual scheduling rules. Because of the time limitations in subdivision (d) of section 18 of article VI of the California Constitution, continuance of oral argument rarely will be granted. Following oral argument and submission of the cause, the court's usual rules for preparation and circulation of opinions apply.

XII. ABSENCE OF JUSTICES

A. If an opinion bears the signatures of four justices, it may be filed as provided above in section X, even though one or more of the signers are absent from the state and regardless of whether the absentee justice is the author of the opinion.

B. When a justice votes to issue a writ or order to show cause, or to grant review or rehearing, and then leaves the state prior to the making of the order, the case may be assigned to him or her if, under these procedures, it would normally be so assigned if he or she were present.

C. As soon as a justice knows that he or she will not be attending a con-

ference of the court, he or she will notify the Chief Justice. Any justice may leave his or her votes on any given conference matter.

XIII. DISQUALIFICATION OF JUSTICES AND ASSIGNMENT OF RETIRED JUSTICES

A. As soon as a justice discovers that he or she is disqualified in any case or, although not technically disqualified, deems it advisable not to participate, he or she will notify the Calendar Coordinator.

B. When it is known after a case is granted but before argument that a justice for any reason is unable to participate in a matter, the Chief Justice pursuant to constitutional authority (Cal. Const., art. VI, § 6) assigns on a rotational basis a Court of Appeal justice to assist the court in place of the nonparticipating justice.

C. If an assigned justice has participated in the decision of a case before this court, that justice will also participate in any further proceedings—including requests for modification, petitions for rehearing, and rehearings—until such time as the decision has become final. This procedure is to be followed unless the original assignment was necessitated by the absence of a regular justice of this court, in which event a regular justice, if able to do so, will participate in lieu of the assigned justice in the consideration of any petition for rehearing and, if rehearing is granted, in any subsequent proceeding.

D. If a justice retires before a case in which he or she has heard oral argument is final, he or she may be assigned to continue to participate in the case. When a permanent replacement justice appointed to fill the vacancy created by the retirement of that justice has taken the oath of office, and the opinion has been filed, any petition for rehearing will be acted on by the permanent replacement justice.

XIV. APPLICATIONS FOR RECOMMENDATIONS FOR EXECUTIVE CLEMENCY, HABEAS CORPUS, AND STAYS

A. An application for a recommendation for executive clemency is treated as a court proceeding. Such applications are filed by the Clerk's Office and given a file number. A memorandum is then circulated among the justices and a notation made by each on an accompanying voting sheet reflecting his or her recommendation.

Such applications will be denied unless four or more justices vote to recommend that clemency be granted. The Chief Justice will inform the Governor by letter of the court's recommendation. Pursuant to the provisions of Penal Code section 4852, the Clerk will transmit the record to the office of the Governor, should the court's recommendation be favorable to the applicant. Otherwise, the documents will remain in the files of the court.

B. When a defendant in a criminal case files a petition for review after denial without opinion by the Court of Appeal of a petition for prohibition or mandate attacking a Penal Code section 995 or section 1538.5 ruling, the matter will be placed on the agenda of a regular conference and will not be accelerated. Absent extraordinary circumstances, no order staying the trial will issue. If the case goes to trial and the matter becomes moot before the regular conference, the memorandum need only so state, and the petition may then be denied as moot without the necessity of considering its merits.

When the Court of Appeal has denied such a writ petition with opinion, a request to stay the trial pending action by the Supreme Court on the petition for review will be granted when necessary to prevent the matter from becoming moot.

C. When a misdemeanor conviction has become final on appeal or a final contempt order has been filed by a trial court and the defendant or contemner files a petition for review following denial of a timely habeas corpus or certiorari petition by a Court of Appeal or files a timely original petition, a stay of execution of the judgment or order will issue pending determination of the petition. The Chief Justice may condition the stay on the filing of a bond or on the continuation of an appeal bond, if any, if he or she deems it appropriate to do so. If the petition appears to lack merit, however, expedited consideration will be given to deny the petition in preference to releasing an incarcerated petitioner.

D. Pending disposition of a petition for writ of habeas corpus to review an order permitting extradition, the Chief Justice may stay extradition on behalf of the court. If the petition appears to lack merit, however, expedited consideration will be given to deny the petition in preference to staying the extradition proceedings.

E. In cases not covered by subdivisions (B) and (C) of this section, and when not precluded by subdivision (G) of this section, the Chief Justice may, in his or her discretion, grant applications for stays of judicial proceedings or orders pending regular conference consideration of the matters involved.

F. Except as provided in subdivisions (B) through (E) of this section and except in emergencies, petitions for habeas corpus, applications for stays of judicial proceedings or orders, and applications for stays of execution are to be resolved at the weekly case conference.

G. Stays governed by special provisions of statutes or rules of court will be issued only in compliance with such provisions. (See, e.g., Pub. Util. Code, §§ 1761–1766; Cal. Rules of Court, rule 49.)

H. Applications to stay actions by public agencies or private parties pending consideration of petitions for writs of mandate (i.e., *Emeryville*-type stays [see *People v. Emeryville* (1968) 69 Cal.2d 533]) are to be resolved at the weekly case conference.

XV. APPOINTMENT OF ATTORNEYS IN CRIMINAL CASES

A. In criminal matters, upon a verified or certified statement of indigency, the court, acting through the Clerk's Office, will appoint an attorney for a party in the following instances:

1. In a pending case in which the petition for review has been granted;
2. In a pending automatic appeal;
3. In an original proceeding in which an alternative writ or an order to show cause has been issued;
4. In capital cases in the following proceedings undertaken after the termination of the party's state appeal:
 - (a) Proceedings in this court for post-conviction review;
 - (b) Proceedings for appellate or other post-conviction review of state court judgments in the United States Supreme Court, subject however to the power of that court to appoint counsel therein; and
 - (c) Applications for executive clemency, and the conduct of sanity hearings when indicated.

B. The court's Automatic Appeals Monitor is responsible for recruiting, evaluating, and recommending the appointment of counsel on behalf of indigent appellants in capital appeals and related state habeas corpus proceedings.

C. Counsel in automatic appeals are compensated by one of two alternative methods: Under the "time and costs" method, counsel are compensated on an hourly basis and reimbursed for necessary expenses that were reasonably incurred. The court makes partial payments on counsel's fee claims while these claims are pending full review. Under the alternative optional "fixed fee and expenses" system, counsel are paid a fixed amount at regular stages of a case, according to a predetermined assessment of its difficulty.

D. Habeas corpus petitions in capital cases are governed by the timeliness and compensation standards set out in the "Supreme Court Policies Regarding Cases Arising From Judgments of Death." Counsel appointed in capital cases have the duty to investigate factual and legal grounds for the filing of a petition for a writ of habeas corpus, as delineated in those policies.

XVI. COMMUNICATIONS FROM COUNSEL IN PENDING CASES

Whenever a matter is pending before the court, any communication to the court from counsel is to be addressed to the Clerk's Office, with copies to all counsel.

XVII. SUSPENSION OF PROCEDURES

Whenever exceptional or emergency conditions require speedy action, or whenever there is other good cause for special action regarding any matter, the operation of these procedures may be temporarily suspended by affirmative vote of four justices.

The Chief Justice may extend any applicable time limit (except that stated in section X) on written request by a justice stating good cause and the date by which he or she expects to comply.



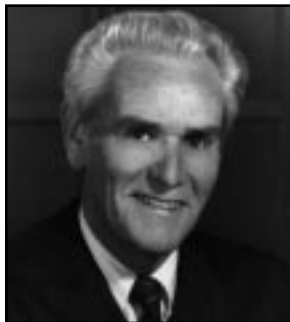
The California Supreme Court in 1974. Pictured from left to right are Associate Justice William P. Clark, Jr., Associate Justice Marshall F. McComb, Associate Justice Stanley Mosk, Chief Justice Donald R. Wright, Associate Justice Raymond L. Sullivan, Associate Justice Mathew O. Tobriner, and Associate Justice Frank K. Richardson.



The California Supreme Court in 1982. Pictured from left to right are Associate Justice Otto M. Kaus, Associate Justice Frank K. Richardson, Associate Justice Mathew O. Tobriner, Chief Justice Rose Elizabeth Bird, Associate Justice Stanley Mosk, Associate Justice Frank C. Newman, and Associate Justice Allen E. Broussard.



Ronald M. George
Chief Justice of California
1996–present



Malcolm M. Lucas
Chief Justice of California
1987–1996



Rose Elizabeth Bird
Chief Justice of California
1977–1987



Donald R. Wright
Chief Justice of California
1970–1977



Roger J. Traynor
Chief Justice of California
1964–1970

APPENDIX I: CHIEF JUSTICES OF CALIFORNIA*

1.	S. Clinton Hastings	January 1850	— January 1852
2.	Henry A. Lyons	January 1852	— March 1852
3.	Hugh C. Murray	March 1852	— September 1857
4.	David S. Terry	October 1857	— September 1859
5.	Stephen J. Field	September 1859	— May 1863
6.	W. W. Cope	May 1863	— January 1864
7.	Silas W. Sanderson	January 1864	— January 1866
8.	John Currey	January 1866	— January 1868
9.	Lorenzo Sawyer	January 1868	— January 1870
10.	Augustus L. Rhodes	January 1870	— January 1872
11.	Royal T. Sprague	January 1872	— February 1872
12.	William T. Wallace	February 1872	— November 1879
13.	Robert F. Morrison	November 1879	— March 1887
14.	Niles Searls	April 1887	— January 1889
15.	William H. Beatty	January 1889	— August 1914
16.	Matt I. Sullivan	August 1914	— January 1915
17.	Frank M. Angellotti	January 1915	— November 1921
18.	Lucien Shaw	November 1921	— January 1923
19.	Curtis D. Wilbur	January 1923	— March 1924
20.	Louis W. Myers	March 1924	— January 1926
21.	William H. Waste	January 1926	— June 1940
22.	Phil S. Gibson	June 1940	— August 1964
23.	Roger J. Traynor	September 1964	— February 1970
24.	Donald R. Wright	April 1970	— February 1977
25.	Rose Elizabeth Bird	March 1977	— January 1987
26.	Malcolm M. Lucas	February 1987	— April 1996
27.	Ronald M. George	May 1996	— Present

* Due to the lack of uniformity in various historical sources, only the month and year that each justice assumed and left office are used in appendices I and II. Since 1977, the *Official Reports* have listed the date of the oath of office as the beginning of each justice's tenure.



Stanley Mosk
Associate Justice
1964–present



Joyce L. Kennard
Associate Justice
1989–present



Marvin R. Baxter
Associate Justice
1991–present



Kathryn M. Werdegarr
Associate Justice
1994–present



Ming W. Chin
Associate Justice
1996–present



Janice R. Brown
Associate Justice
1996–present

APPENDIX II: JUSTICES OF THE CALIFORNIA SUPREME COURT

1.	S. Clinton Hastings*	January 1850	— January 1852
2.	Henry A. Lyons*	December 1849	— March 1852
3.	Nathaniel Bennett	December 1849	— October 1851
4.	Hugh C. Murray*	October 1851	— September 1857
5.	Solomon Heydenfeldt	January 1852	— January 1857
6.	Alexander Anderson	April 1852	— January 1853
7.	Alexander Wells	January 1853	— October 1854
8.	Charles H. Bryan	November 1854	— November 1855
9.	David S. Terry*	November 1855	— September 1859
10.	Peter H. Burnett	January 1857	— October 1858
11.	Stephen J. Field*	October 1857	— May 1863
12.	Joseph G. Baldwin	October 1858	— January 1862
13.	W. W. Cope*	September 1859	— January 1864
14.	Edward Norton	November 1861	— January 1864
15.	E. B. Crocker	May 1863	— January 1864
16.	Silas W. Sanderson*	January 1864	— January 1870
17.	John Currey*	January 1864	— January 1868
18.	Lorenzo Sawyer*	January 1864	— January 1870
19.	Augustus L. Rhodes*	January 1864	— January 1872
20.	Oscar L. Shafter	January 1864	— December 1867
21.	Royal T. Sprague*	January 1868	— February 1872
22.	Joseph B. Crockett	December 1867	— January 1880
23.	William T. Wallace*	December 1869	— November 1879
24.	Jackson Temple	January 1870	— January 1872
		December 1886	— June 1889
		January 1895	— December 1902
25.	Addison C. Niles	January 1872	— January 1880

* Served as Chief Justice of California. See appendix I for each individual's length of service as Chief Justice. Some justices have served as both Chief and Associate Justices.

26.	Isaac S. Belcher	March 1872	— January 1874
27.	E. W. McKinstry	January 1874	— October 1888
28.	Robert F. Morrison*	November 1879	— March 1887
29.	Erskine M. Ross	January 1880	— October 1886
30.	John R. Sharpstein	January 1880	— December 1892
31.	Samuel Bell McKee	January 1880	— December 1887
32.	Milton H. Myrick	January 1880	— January 1887
33.	James D. Thornton	January 1880	— January 1891
34.	A. Van R. Paterson	January 1887	— April 1894
35.	Thomas B. McFarland	January 1887	— September 1908
36.	Niles Searls*	April 1887	— January 1889
37.	John D. Works	October 1888	— January 1891
38.	William H. Beatty*	January 1889	— August 1914
39.	Charles N. Fox	June 1889	— January 1891
40.	John J. De Haven	January 1891	— January 1895
41.	Charles H. Garoutte	January 1891	— January 1903
42.	Ralph C. Harrison	January 1891	— January 1903
43.	William F. Fitzgerald	January 1893	— January 1895
44.	W. C. Van Fleet	April 1894	— January 1899
45.	Frederick W. Henshaw	January 1895	— January 1918
46.	Walter Van Dyke	January 1899	— December 1905
47.	Frank M. Angellotti*	January 1903	— November 1921
48.	Lucien Shaw*	January 1903	— January 1923
49.	William G. Lorigan	January 1903	— January 1919



The California Supreme Court in 1986. Pictured in the Chief Justice's chambers from left to right are Associate Justice Stanley Mosk, Associate Justice Malcolm M. Lucas, Associate Justice Cruz Reynoso, Chief Justice Rose Elizabeth Bird, Associate Justice Joseph R. Grodin, Associate Justice Edward A. Panelli (standing), and Associate Justice Allen E. Broussard (seated).

50.	M. C. Sloss	February 1906	— February 1919
51.	Henry A. Melvin	September 1908	— April 1920
52.	Matt I. Sullivan*	August 1914	— January 1915
53.	William P. Lawlor	January 1915	— July 1926
54.	Curtis D. Wilbur*	January 1918	— March 1924
55.	Thomas J. Lennon	January 1919	— August 1926
56.	Warren Olney, Jr.	March 1919	— July 1921
57.	William A. Sloane	May 1920	— December 1922
58.	Charles A. Shurtleff	July 1921	— December 1922
59.	William H. Waste*	November 1921	— June 1940
60.	Terry W. Ward	December 1922	— January 1923
61.	Frank H. Kerrigan	January 1923	— February 1924
62.	Emmet Seawell	January 1923	— July 1939
63.	Louis W. Myers*	January 1923	— January 1926
64.	John E. Richards	February 1924	— June 1932
65.	John W. Shenk	April 1924	— August 1959
66.	Jesse W. Curtis	January 1926	— January 1945
67.	Frank G. Finlayson	October 1926	— December 1926
68.	Jeremiah F. Sullivan	November 1926	— January 1927
69.	John W. Preston	December 1926	— October 1935
70.	William H. Langdon	January 1927	— August 1939
71.	Ira F. Thompson	December 1932	— August 1937
72.	Nathaniel P. Conrey	October 1935	— November 1936
73.	Douglas L. Edmonds	November 1936	— December 1955
74.	Frederick W. Houser	September 1937	— October 1942
75.	Jesse W. Carter	September 1939	— March 1959
76.	Phil S. Gibson*	September 1939	— August 1964
77.	Roger J. Traynor*	August 1940	— February 1970
78.	B. Rey Schauer	December 1942	— September 1964
79.	Homer R. Spence	January 1945	— June 1960
80.	Marshall F. McComb	January 1956	— May 1977
81.	Raymond E. Peters	March 1959	— January 1973
82.	Thomas P. White	August 1959	— October 1962
83.	Maurice T. Dooling, Jr.	June 1960	— June 1962
84.	Mathew O. Tobriner	July 1962	— January 1982
85.	Paul Peek	December 1962	— December 1966
86.	Stanley Mosk	September 1964	— Present

87.	Louis H. Burke	November 1964	— November 1974
88.	Raymond L. Sullivan	December 1966	— January 1977
89.	Donald R. Wright*	April 1970	— February 1977
90.	William P. Clark, Jr.	March 1973	— March 1981
91.	Frank K. Richardson	December 1974	— December 1983
92.	Wiley W. Manuel	March 1977	— January 1981
93.	Rose Elizabeth Bird*	March 1977	— January 1987
94.	Frank C. Newman	July 1977	— December 1982
95.	Otto M. Kaus	July 1981	— October 1985
96.	Allen E. Broussard	July 1981	— August 1991
97.	Cruz Reynoso	February 1982	— January 1987
98.	Joseph R. Grodin	December 1982	— January 1987
99.	Malcolm M. Lucas*	April 1984	— April 1996
100.	Edward A. Panelli	December 1985	— January 1994
101.	John A. Arguelles	March 1987	— March 1989
102.	David N. Eagleson	March 1987	— January 1991
103.	Marcus M. Kaufman	March 1987	— January 1990
104.	Joyce L. Kennard	April 1989	— Present
105.	Armand Arabian	March 1990	— February 1996
106.	Marvin R. Baxter	January 1991	— Present
107.	Ronald M. George*	September 1991	— Present
108.	Kathryn M. Werdegar	June 1994	— Present
109.	Ming W. Chin	March 1996	— Present
110.	Janice R. Brown	May 1996	— Present



The California Supreme Court in 1987. Pictured at the Chief Justice's conference table, standing from left to right, are Associate Justice Edward A. Panelli, Associate Justice David N. Eagleson, Associate Justice John A. Arguelles, and Associate Justice Marcus M. Kaufman. Seated from left to right are Associate Justice Stanley Mosk, Chief Justice Malcolm M. Lucas, and Associate Justice Allen E. Broussard.